

The "building blocks" approach would only add to up-front costs by forcing transaction costs on these licensees as they try to negotiate for more spectrum. Incumbent mobile service providers would be the only players with any cleared spectrum to leverage wireless revenues against the prices and transactions costs in the PCS after-market. Moreover, all bidders would place a lower value on spectrum in order to account for after-market transaction costs, thereby reducing significantly the PCS auction revenues to the federal government. These after-market transaction costs, however, are avoided from the start by allocating large spectrum blocks.

Given that the after-market is likely to be dominated by the entrenched mobile service providers, 30 MHz allocations together with the ability to create 40 MHz licenses furnish non-cellular and non-ESMR PCS operators the minimum amount of spectrum necessary to compete with incumbent service providers. Once the incumbents obtain the additional spectrum permitted by the Commission, they will be further advantaged. The 30 MHz allocation together with the ability to create 40 MHz licenses both provides the efficiencies needed to prevent the PCS industry from failing even before it gets started and ensures that PCS auction revenues will approximate the levels projected by Congress and the Administration.

3. Designated Entities

Some panelists argued that licenses no greater than 20 MHz (with at least one license set-aside for designated entities) are necessary for designated entity participation in PCS.⁴⁴ We strongly disagree; designated entity participation does not require that the Commission break up the 30 MHz licenses. If the 20 MHz blocks for designated entities are inadequate, the answer to this problem should be sought in some direction other than making the licenses for other PCS

competitive bidding legislation to recover for the public the value of the allocated public spectrum. See 47 U.S.C. § 309(j)(3)(C); see also H. Rep. No. 103-11, 103rd Cong. 1st Sess. at 253 (1993) (House finds that "if licensees are engaged in reselling the use of public airwaves to subscribers for a fee, the licensee should pay reasonable compensation to the public for those resources").

⁴⁴ See Oral Statement of John Oxendine to the FCC Panel Discussion, transcript at 232, 256 (April 11, 1994) ("Oxendine Statement"); Oral Statement of George E. Murray to the FCC Panel Discussion, transcript at 23, 24 (April 12, 1994) ("Murray Statement").

operators inadequate as well. PCS is an opportunity for new entrants, including new-entrant designated entities, in the wireless market. All new entrants would be disserved by a licensing scheme that favors the existing wireless providers and inordinately delays the rollout of PCS by requiring after-market aggregation.

Moreover, in its Petition for Reconsideration and Clarification, PCS Action described the benefits to designated entities if, under the allocation scheme adopted by the Commission, PCS licensees in the 1850-1970 MHz band were permitted to lease, enter into joint ventures or consortia, or otherwise use portions of spectrum licensed to others in the same band.⁴⁵ Designated entities will benefit from this flexibility whether the Commission decides to allocate them 20 MHz or 30 MHz licenses. The proposed flexibility, which has been endorsed by the Minority Telecommunications Executives & Companies (NAMTEC)⁴⁶ and the American Wireless Communication Corporation (a national consortium of designated entity companies),⁴⁷ furnishes designated entities with a much greater range of opportunities, including much earlier returns on their investment. Through arrangements with the 30 MHz MTA licensees, designated entities can raise the capital to pay for the relocation of fixed microwave licensees or gain concessions that help in building out their areas. They can negotiate the benefits of being part of a consortium and thereby have the opportunity for meaningful participation in the deployment of PCS services. In short, there is no need to abandon the 30 MHz license allocations in order to ensure meaningful participation by designated entities.

⁴⁵ See PCS Action's Petition for Reconsideration and Clarification, GEN Docket No. 90-314, at 10-12 (Dec. 8, 1993).

⁴⁶ See Comments of National Association of Minority Telecommunications Executives & Companies, P.P. Dkt. No. 93-253, at 22 (Nov. 10, 1993).

⁴⁷ Reply Comments of the American Wireless Communication Corporation, GEN Docket No. 90-314 (Jan. 13, 1994).

B. Broad Geographic License Areas for PCS

Panelists were nearly uniform in praising the Commission's decision to use MTAs for PCS licensing. The fact is that new PCS entrants "need to be able to offer seamless mobility at least in an area that encompasses a rational economic region."⁴⁸ This conforms with the Commission's conclusion that wide-area licensing (1) was likely to "provide the economies of scale and scope necessary for the development of low cost PCS equipment," "promote roaming within large geographic areas," and "facilitate interoperability with other PCS systems," and (2) would promote effective coverage and rapid deployment of PCS, reduce the costs of interference coordination between PCS licensees, simplify the coordination of technical standards, and facilitate the relocation of microwave incumbents in the PCS bands.⁴⁹

As noted earlier in these proceedings, NTIA has correctly concluded that a BTA-only licensing scheme could delay the deployment of PCS services because of the need to (1) auction thousands of PCS licenses, (2) have parties "engage in a lengthy process to aggregate very small license areas into large areas, as was frequently done in the cellular service," and (3) then have them coordinate interference among nearly 500 geographic areas.⁵⁰ All of this would increase the costs of PCS service providers and the costs to consumers.

Finally, it should be noted that, apart from the petitions filed by some existing mobile service providers, no petitioners requested that the Commission rely exclusively on BTAs as the service areas for PCS licenses.

⁴⁸ Alex, Brown Testimony at 2.

⁴⁹ Second Report and Order at ¶¶ 72-75.

⁵⁰ See NTIA Letter at 5.

C. Maintain In-Region Cellular Eligibility Rules

The Commission's adoption of a 10 MHz PCS spectrum limit on in-region cellular carriers reflects its recognition that the wireless market is far from being perfectly competitive. Ninety percent of today's cellular market is dominated by nine cellular providers nationwide: affiliates of the seven Regional Bell Operating Companies, AT&T/McCaw, and GTE/Contel, with each local cellular market subject to a duopoly. The new spectrum is intended to provide consumers with relief from the dominant pricing practices of the cellular industry. The duopoly rents currently enjoyed by the cellular industry were confirmed by the experts on the PCS Demand Panel who predicted that once PCS provides the competition, prices for cellular service will fall.⁵¹

All of the economists who testified suggested a single wireless market. If the goal is new competition, then it seems axiomatic to limit the eligibility of existing mobile service providers in that market. In-region cellular incumbents have 25 MHz of clear spectrum at 800 MHz. To this will be added 10 MHz of PCS spectrum for a total of 35 MHz. This is already greater than the 30 MHz proposed for PCS entrants. To provide 20 MHz licenses to in-region cellular entities would greatly tip the balance in favor of existing players by providing 45 MHz to them and 20 MHz to the new entrants. Clearly, this would be an anti-competitive allocation given that wireless is one market.

Commissioner Barrett recognized this ploy in the panel discussion when he asked Dr. Waylan, of GTE, "with your already present 25, would [you] also want an additional 20, and other people would have 20, and you would have 45?"⁵² Although Dr. Waylan did not answer how much spectrum is appropriate for cellular, by opposing restrictions limiting it to 10 MHz in-

⁵¹ See, e.g., Yankee Group Statement, transcript at 87.

⁵² FCC Panel Discussion Transcript of April 11, 1994 at 100.

region, then the cellular industry must want eligibility for 20 MHz or perhaps even 30 MHz. Under either proposal, cellular is demanding a disproportionate amount of spectrum.

The panelists also confirmed that cellular holds a significant headstart in the wireless market.⁵³ This headstart includes the 25 MHz of spectrum that cellular holds and which can be readily used for PCS services.⁵⁴ The headstart also includes the existing physical infrastructure - cell sites, antenna locations, switching equipment -- that new PCS entrants must overcome. Cellular also has a tremendous marketing headstart of an existing, rapidly growing, customer base, which it has built up over a twelve-year period.

As Dr. Kelley's testimony shows, effective restrictions on in-region cellular firms are needed to allow new entrants an opportunity to establish a cellular-competitive service.⁵⁵ Without restrictions, cellular has a strong incentive to use the spectrum auction as a means of keeping new competition away, or driving up the costs of entry, and protecting its monopoly rents. Cellular interests have attacked both the 10 MHz eligibility restriction and the Commission's attribution standards because they understand that a relaxation of one or the other will allow them to inhibit in-region competition. If the attribution standards are relaxed then the in-region cellular operators can easily form consortia to accomplish the same anti-competitive goals.

53 See EMCI Statement, transcript at 88; Yankee Group Statement, transcript at 87-88; Alliance Statement, transcript at 238-240; Northern Telecom Statement, transcript at 102-103.

54 Oftentimes, the cellular industry makes the "red herring" argument that its customers are tied to analog equipment and so its 25 MHz is not as efficient as 25 MHz of the PCS spectrum. In fact, cellular is converting its customers to digital equipment every day. See Alliance Testimony at 1; DSS Study at 3. In the time it takes to implement PCS, cellular will be even further along in its phase-out of analog equipment. It is critical to keep in mind that the rate of conversion is entirely within the discretion of the industry. As soon as it is economical to switch its customers to digital, it will do so.

55 Oral Statement of Daniel Kelley, Hatfield Associates, Inc. to the FCC Panel Discussion, transcript at 202 (April 11, 1994) ("Hatfield Statement").

Cellular has failed to counter the evidence of anti-competitive behavior and the headstart advantage. Even the study presented by Dr. Besen fails to address the real world antitrust implications of cellular's impact on the wireless market. Besen's evidence before the FCC shows that he studied market concentration in markets with from seven to ten independently competing firms.⁵⁶ This does not reflect the estimates of the expert panelists of five to six independent competitors in the wireless market. Obviously, if the market has ten viable competitors, the ability to impose monopolistic control on the market decreases. But, that is not the wireless market.

In the actual wireless market, and according to the panel experts, cellular will have a competitive advantage with cell-sites and customers already locked in -- this factor is not reflected in the Besen study. In the actual market, PCS will add two, perhaps three, new entrants into a market dominated by two incumbent cellular providers and, perhaps, an SMR operator.⁵⁷ If in-region cellular operators secure one or two of these two or three PCS licenses, then the auction will have generated no more than one new entrant -- and possibly none -- into the wireless market.

In short, neither the panel discussion nor the Besen study provides any basis for the Commission to second-guess its cellular eligibility rules.

IV. Conclusion

For the reasons discussed above and at last week's two-day panel discussions, the Commission should maintain the key elements of the allocation plan set forth in the PCS Second Report and Order: 30-MHz MTA licenses available to all except certain in-region cellular

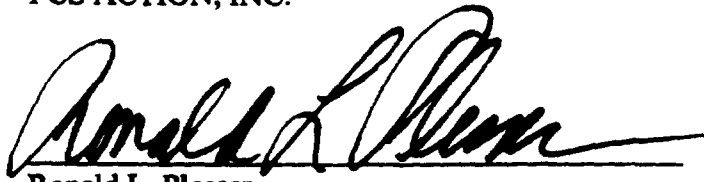
⁵⁶ Written Testimony of Charles River Associates to the FCC Panel Discussion at 6, at Table 1 to 6 (April 11, 1994) ("Charles River Testimony").

⁵⁷ See Salomon Brothers Statement, transcript at 279; Alex, Brown Statement, transcript at 279; MIT Statement, transcript at 159 (economist estimated one or two PCS entrants with three or four existing competitors in the wireless market).

providers, with the possibility of aggregating 40 MHz. The Commission's allocation plan will result in readily deployable and competitive PCS systems, and any effort to undermine or compromise that goal -- to the ultimate detriment of the American consumer -- should be rejected.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Ronald L. Plesser", written over a horizontal line.

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